

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

AQUALINA ETHERIDGE, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

VITA-MIX MANUFACTURING
CORPORATION,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

CASE NO. 1:21-cv-00179

DECLARATION OF THE SETTLEMENT ADMINISTRATOR

I, Jodi Belmont Berbrich, pursuant to 28 U.S.C. § 1746, hereby declare, under penalty of perjury, that the following is true and correct to the best of my personal knowledge, information, and belief:

1. My name is Jodi Belmont Berbrich. I am over the age of eighteen (18) years. I make this declaration under the penalty of perjury, free and voluntarily, under no coercion, threat, or intimidation, and without promise of benefit or reward, based on my own personal knowledge. If called to testify, I could and would testify consistent with the matters stated herein

2. I am a Project Manager at Analytics Consulting LLC (hereinafter “Analytics”) and acted as the Settlement Administrator in this matter.

3. On or about July 28, 2021, Analytics was provided an Excel file containing 536 records. The data included class member names, and mailing addresses.

4. Analytics processed the records through NCOA to standardize and update the mailing addresses.

5. On August 20, 2021, Analytics sent by First Class Mail the “Notice of Proposed Settlement of Class Action and Fairness Hearing” (“Notice”) to the 536 Class Members. A copy of the Notice template is attached as **Exhibit 1**.

6. To date, 25 Notices have been returned as undeliverable by the Post Office. Analytics traced the 25 Class Members with undeliverable notices, located updated addresses for ten (10) Class Members and notices were promptly re-mailed to the updated addresses. As of September 24, 2021, there are 15 undeliverable notices.

7. The deadline to request exclusion was September 20, 2021. Analytics received no exclusion requests.

8. The deadline to file an objection was September 20, 2021. I am not aware of any objections to the settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

September 28, 2021

DocuSigned by:
Jodi Belmont Berbrich
780254511C42408...

Jodi Belmont Berbrich
Project Manager at Analytics Consulting LLC

EXHIBIT 1

AUGUST 20, 2021

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND FAIRNESS HEARING

ABC1234567890

Claim Number 1111111



JOHN Q CLASSMEMBER
123 MAIN ST
APT 1
ANYTOWN, ST 12345

TO: All individuals who were or are employed by Vita-Mix Manufacturing Corporation (“Vitamix” or the “Defendant”) as non-exempt Assemblers 1, 2, or 3 or Team Leads at its manufacturing facilities at any time between January 21, 2018 and February 27, 2021, and all individuals who signed and filed consent to join forms in the below-referenced lawsuit.

FROM: Judge Dan A. Polster, United States District Court for the Northern District of Ohio.

RE: Proposed Settlement in *Aqualina Etheridge v. Vita-Mix Manufacturing Corporation*, U.S. District Court, Northern District of Ohio, Case No. 1:21-cv-00179.

A SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS	
YOU CAN DO NOTHING	If you do nothing, you will be eligible to receive a monetary payment under the settlement if it is approved. You give up your rights to sue the Defendant as part of another lawsuit over the claims resolved by this settlement.
YOU CAN ASK TO BE EXCLUDED	If you ask to be excluded, you will not be eligible to receive a payment under the settlement. You may not object. You may sue the Defendant as part of another lawsuit over the claims resolved by this settlement.
YOU CAN OBJECT	You can write the Court about why you don’t agree with the settlement. If you object, you will still be eligible to receive a payment under the settlement if it is approved.
YOU CAN GO TO A HEARING	If you do not ask to be excluded, you can ask to speak in Court about the settlement.

- These rights and options - **and the deadlines to exercise them** - are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Monetary payments under the settlement will only become available if the Court approves the settlement and the settlement becomes final. Please be patient.
- Your legal rights are affected whether you act or don’t act. Read this Notice carefully.

BASIC INFORMATION

1. Why was this Notice issued?

This Notice informs you of the Court's preliminary approval of a proposed settlement of a class action lawsuit, advises you of your rights as a Class Member, and tells you how to receive a share of the settlement funds. Please read this Notice carefully. The proposed settlement affects your legal rights.

2. What is this lawsuit about?

The lawsuit was filed against Vitamix on January 21, 2021 as a collective and class action under the Fair Labor Standards Act ("FLSA") and Ohio Minimum Fair Wage Standards Act ("OMFWSA"). The Class Representative is Aqualina Etheridge, who previously worked for Vitamix as an Assembler 2.

The Class Representative contends that she and other similarly situated Assemblers 1, 2, and 3 and Team Leads working at Vitamix's manufacturing facilities engaged in pre-shift activities for which they were not paid, in violation of the FLSA and OMFWSA.

3. Why is this a class action?

In a class action, a person called a "Class Representative" sues on behalf of people who may have similar claims. All these people are a "Class" or "Class Members." One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a settlement?

Vitamix maintains that it properly paid its employees for all hours worked and denies the allegations. The Court did not decide in favor of the Class Representative or Vitamix. Instead, both sides agreed to settle this case to avoid the cost, time, and uncertainty of further litigation. The Court has granted preliminary approval of the settlement. The settlement does not mean that any law was broken or that Defendant did anything wrong. The Class Representative and her attorneys think the settlement is best for all Class Members.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the settlement?

All Class Members are part of the settlement. Class Members include all individuals who were or are employed by Vitamix as non-exempt Assemblers 1, 2, or 3 or Team Leads at its manufacturing facilities at any time between January 21, 2018 and February 27, 2021, including the Class Representative, as well as all individuals who previously signed and filed consent to join forms in this lawsuit.

WHAT WILL YOU GET AND WHEN, AND WHAT ARE YOU GIVING UP

6. What does the settlement provide?

If the Court grants final approval of the settlement, the total settlement amount will be \$299,759.73, which will cover the Class Settlement Payment to Class Members, a service award to the Class Representative, and attorneys' fees and costs. The Class Settlement Payment of \$196,343.90 will be divided proportionally into Individual Payments for which all Class Members will be eligible. The Individual Payments for Class Members have been calculated proportionally on each Class Member's alleged overtime damages based on an additional 6-7 minutes per day worked during the period between January 21, 2018 and February 27, 2021, with a minimum payment of \$25.00 per Class Member. Individual Payments will be allocated equally between wages and liquidated damages. (For individuals who previously signed and filed consent to join forms in this lawsuit but who were never employed by Vitamix directly, 100% of the Individual Payments to each of these individuals will constitute liquidated damages, *i.e.* taxable non-wage income.) A service award in the amount of \$2,000.00 will be paid to the Class Representative to compensate her for discovering the claims and reporting it to Class Counsel, assisting Class Counsel, engaging in telephone calls and email correspondence with Class Counsel, undertaking the responsibilities and burdens of serving as the named plaintiff in a lawsuit, and entering into a general release of all claims with Vitamix. In addition, a total of \$101,415.83 will be paid to Class Counsel for attorneys' fees and costs.

7. How do I get a settlement payment?

To participate in the settlement, you are not required to do anything. You are automatically eligible to receive an Individual Payment. Checks will be mailed to Class Members at the last known addresses listed in Vitamix's records (or, for temporary employees, at the last known addresses provided to Vitamix by the appropriate staffing

companies). If your address has changed, you must send your name and current mailing address to the settlement administrator, Analytics Consulting LLC at Vitamix FLSA Settlement, P.O. Box 2002, Chanhassen, MN 55317-2002. The settlement administrator will withhold from each Individual Payment to Class Members all applicable taxes under federal, state, and/or local laws and will issue IRS W-2 Forms for the wage portion of Individual Payments and an IRS Form 1099-Misc. for the liquidated damages portion of the Individual Payments. (For individuals who previously signed and filed consent to join forms in this lawsuit but who were never employed by Vitamix directly, 100% of the Individual Payments to each of these individuals will constitute liquidated damages, *i.e.* taxable non-wage income, and an IRS Form 1099-Misc. will be issued for these Individual Payments.)

8. When will I get my payment?

Your Individual Payment will be mailed on approximately December 2, 2021, which means that you will likely receive it within a week thereafter.

9. What am I giving up to get a payment or stay in the Class?

If the Court grants final approval of the settlement, you will be bound by the release of state law claims, unless you have excluded yourself from the settlement in the manner described below. The Settlement Agreement includes the following release of state law claims:

“Released State Law Claims” means the release and discharge of Released Persons from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, whether known or unknown, that were, or could have been, made by any of the Class Members (other than those who submit valid and timely requests for exclusion) regarding their wages and hours worked during their employment with Vitamix as Assemblers 1, 2, and 3 and Team Leads (and with respect to those temporary employees placed at Vitamix, during their placement at Vitamix) arising under the laws of the state of Ohio, including any claims for liquidated damages, attorneys’ fees, costs, expenses, interest, penalties, settlement administration costs, service awards, and any other monetary claims related to the payment of wages, through the Released Period.

“Released Persons” means Vitamix and its officers, directors, shareholders, employees, representatives, corporate parents, corporate siblings, subsidiaries, predecessors, successors, affiliates, and otherwise related entities. The “Released Period” means the period from January 21, 2018 through the date of the Representative Plaintiff’s execution of th[e] Settlement Agreement.

If the Court grants final approval of the settlement, you do not exclude yourself from the settlement in the manner described below, and you cash the Individual Payment check that you receive in the mail, you will also be bound by the release of federal law claims. The Settlement Agreement includes the following release of federal law claims upon negotiation of Individual Payment checks by Class Members:

“Released Federal Law Claims” means the release and discharge of Released Persons from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, whether known or unknown, that were, or could have been, made by any of the Class Members (other than those who submit valid and timely requests for exclusion) who timely negotiate their Individual Payment checks, regarding their wages and hours worked during their employment with Vitamix as Assemblers 1, 2, and 3 and Team Leads (and with respect to those temporary employees placed at Vitamix, during their placement at Vitamix) arising under the FLSA, including any claims for liquidated damages, attorneys’ fees, costs, expenses, interest, penalties, settlement administration costs, service awards, and any other monetary claims related to the payment of wages, through the Released Period.

When claims are “released,” that means that you cannot sue Vitamix for any of the claims that are covered by the release.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

The Court appointed Anthony J. Lazzaro, Chastity L. Christy, and Lori M. Griffin of The Lazzaro Law Firm, LLC to represent you and other Class Members as “Class Counsel.” You do not have to personally pay Class Counsel. You can reach Class Counsel by phone at 216-696-5000. You may call Class Counsel to discuss any questions you may have about this settlement. If you want to be represented by your own lawyer, and have that lawyer appear in court for you in this case, you may hire one at your own expense.

11. Class Counsel's recommendation.

Class Counsel strongly recommends the settlement, which offers valuable payments to Class Members without the risk, uncertainty, and delay of continuing with the lawsuit. If the Court grants final approval of the settlement, and if the settlement becomes effective, every Class Member will receive an Individual Payment in the form of a monetary payment as described above (unless they request to exclude themselves from the settlement). Class Members do not need to take any action to receive their Individual Payments.

IF YOU DO NOTHING**12. What happens if I do nothing at all?**

If you do nothing, and the settlement is approved by the Court and becomes final, you will receive an Individual Payment in the form of a monetary payment. If you do nothing, you will also give up rights to sue the Defendant as part of another lawsuit over the claims resolved by this settlement.

EXCLUDING YOURSELF FROM THE SETTLEMENT**13. How do I get out of the settlement?**

To exclude yourself from the settlement, you must mail a letter saying you want to be excluded from *Aqualina Etheridge v. Vita-Mix Manufacturing Corporation*. Be sure to include the case number (Case No. 1:21-cv-00179), your full name, current address and telephone number, and signature. You must mail your request for exclusion postmarked by **September 20, 2021** to the settlement administrator, Analytics Consulting LLC, at Vitamix FLSA Settlement, P.O. Box 2002, Chanhassen, MN 55317-2002. You can't exclude yourself on the phone, by email, or on Class Counsel's website.

14. If I do not exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Defendant for the Released State Law Claims. You must exclude yourself to start your own lawsuit, continue with a lawsuit, or be part of any other lawsuit relating to the state law claims in this case. If you cash the Individual Payment check, you give up the right to sue Defendant for the Released Federal Law Claims.

15. If I exclude myself, can I get benefits from this settlement?

No. If you exclude yourself, you will not receive an Individual Payment and you cannot object to the proposed settlement. However, if you ask to be excluded, you may sue, continue to sue, or be part of a different lawsuit against the Defendant in the future. You will not be bound by anything that happens in this lawsuit.

OBJECTING TO THE SETTLEMENT**16. How do I tell the Court if I do not like the settlement?**

If you do not exclude yourself and you do not want the Court to approve the settlement, you must file a written objection within 30 days. You must give reasons why you think the Court should not approve the settlement. To object, send a letter saying that you object to *Aqualina Etheridge v. Vita-Mix Manufacturing Corporation*. Be sure to include the case number (No. 1:21-cv-00179), your full name, current address and telephone number, signature, the reasons why you object to the settlement, all documents you want the Court to consider, and a "Notice of Appearance" if you hired your own lawyer to represent you in connection with this objection. You must mail the objection so that it is postmarked no later than **September 20, 2021** to the settlement administrator, Analytics Consulting, LLC at Vitamix FLSA Settlement, P.O. Box 2002, Chanhassen, MN 55317-2002, as well as the three addresses below. Late objections will not be considered. If you either approve of the settlement or choose to exclude yourself, you do not need to object.

Court
Clerk of Court
Carl B. Stokes U.S. Court House
801 West Superior Avenue
Cleveland, Ohio 44113

Class Counsel
Anthony J. Lazzaro
Chastity L. Christy
Lori M. Griffin
c/o The Lazzaro Law Firm, LLC
The Heritage Building, Suite 250
34555 Chagrin Boulevard
Moreland Hills, Ohio 44022

Defense Counsel
John Gerak
Amanda Quan
Samuel Ottinger
c/o Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
Key Tower
127 Public Square, Suite 4100
Cleveland, Ohio 44114

17. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself from this settlement is telling the Court that you don't want to be part of the Class. If you exclude yourself, you cannot object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a fairness hearing to decide whether to grant final approval of the settlement. You may attend and ask to speak, but you are not required to.

18. When and where will the Court decide whether to grant final approval of the settlement?

The Court has scheduled a Fairness Hearing at 12:00 p.m. on October 25, 2021 via Zoom. The hearing may be moved to a different date or time (or different format) without notice, so if you plan to attend, you should call or email Class Counsel for current information. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may listen to people who have asked to speak about an objection (*see* Objecting to the Settlement). At or after the hearing, the Court will decide whether to grant final approval of the settlement.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend.

20. May I speak at the hearing?

Yes. You, or an attorney you hire at your own expense, may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intent to Appear in *Aqualina Etheridge v. Vita-Mix Manufacturing Corporation*." Be sure to include the case number (No. 1:21-cv-00179), your name, address, telephone number, signature, any documents you will seek to introduce, and a list of witnesses who you want to testify at the hearing. Your Notice of Intent to Appear must be postmarked no later than **October 15, 2021**, and be sent to the Clerk of Court, Northern District of Ohio, Carl B. Stokes U.S. Court House, 801 West Superior Avenue, Cleveland, Ohio 44113. You cannot speak at the hearing if you excluded yourself from the Class.

GETTING MORE INFORMATION**21. How do I get more information about the settlement?**

This Notice summarizes the proposed settlement. More details about the settlement are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel as indicated above, who will email, fax, or mail a copy of the Settlement Agreement to you upon request.

If you have questions or need further information, please contact Class Counsel at 216-696-5000, or you may contact the Settlement Administrator at:

Vitamix FLSA Settlement
P.O. Box 2002
Chanhassen, MN 55317-2002
Toll-free: 1-855-904-6246
Email: VitamixFLSASettlement@noticeadministrator.com

PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS ABOUT THE SETTLEMENT.